STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION	)	
On its own motion	)	
	)	Docket No. 01-0485
Adoption of Part 732	)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, April 2, 2002, we filed with the Chief Clerk of Illinois Commerce Commission the enclosed GCI Reply Brief on Rehearing of the People of the State of Illinois, City of Chicago and the Citizens Utility Board via e-docket to the Chief Clerk of the Illinois Commerce Commission at 527 East Capitol Avenue, Springfield, Illinois 62794-9280.

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CERTIFICATE OF SERVICE

I, Susan L. Satter, Assistant Attorney General, hereby certify that I served the above identified documents upon all active parties of record on the attached service list on April 2, 2002, by electronic mail to all active parties. Hard copies will be provided upon request.

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STATE OF ILLINOIS
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Illinois Commerce Commission	)	
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	)	Docket No. 01-0485
Revision of Ill. Adm. Code Part 732	)	

THE CITY OF CHICAGO, PEOPLE OF THE STATE OF ILLINOIS, AND CITIZENS UTILITY BOARD (COLLECTIVELY KNOWN AS GCI) REPLY BRIEF ON REHEARING

The City of Chicago (City), by its attorney, Mara S. Georges, Corporation Counsel, the People of the State of Illinois by James E. Ryan, Attorney General, (AG), and Citizens Utility Board (CUB), known as Government and Consumer Intervenors (GCI), respond to the Initial Briefs of the other parties filed on this rehearing. In summary, GCI urge the Commission to reject the efforts of Illinois Bell Telephone Co. (Ameritech Illinois) and Verizon to gut many of the consumer protection and public information provisions of the Part 732 rules. The customer education and reporting requirements are not burdensome, but rather are necessary to insure that consumers know about the legislatively created credit system, and to keep the Commission, the public and carriers informed about credit payments and exemptions. Further, the efforts of the Illinois Telephone Association (ITA) and AI and Verizon to "drive a truck" through the limited strike exemption by expanding it to three months, should be rejected as harmful to consumers, contrary to the intent of HB 2900, and unnecessary under the law.

Issue 1: Four Hour Appointment Window for CLECs

Allegiance and McLeod request a temporary waiver of the four hour appointment window, due to difficulties between themselves and Ameritech Illinois, from whom they purchase wholesale services. They concede that they intend to conform to the four hour appointment window in the long term. Given the fact that the problems associated with the four hour window are essentially notice issues between the ILEC and the CLEC, they should be resolved sooner rather than later. The ILECs will have to provide their customers with a four hour window for appointments, and non-discriminatory treatment of competitors should require that the ILEC also give competitors the same four hour window for work to be done by the ILEC. Allegiance states that "at this time there is a question as to whether the underlying problem is really poor ILEC performance." Alleg. Ini. Br. at 10. If the problem is a matter of ILEC poor performance or discrimination, postponing the effect of the rule will only exacerbate the problem and countenance unacceptable practices. When this rule is in place, an ILEC's failure to provide the necessary information can only be viewed as anti-competitive and unacceptable.

As GCI witness David Kolata pointed out, if ILECs continue to disregard the requirements of the rule to the CLECs' and their customers' detriment, there are expedited procedures in place to address the problem. In fact, sections 13-514, 13-515 and 13.516 provide remedies only available to address anti-competitive actions, such as "unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications carrier." (220 ILCS 5/13-514(2)). Whether the CLECs find these remedies sufficient is a matter beyond the scope of this rehearing docket and ultimately a matter for the legislature.

Finally, Allegiance admits that appointments are usually not necessary for installations, and therefore repairs are the only situation where the four hour appointment window would be implicated. Alleg. Ini. Br. at 6. Given the limited scope of the problem, the solution should not be a blanket waiver of the four hour appointment window for CLECs. The solution should be more closely tailored to the problem, which appears to be repair appointments.

Issue 2: Strikes as Emergency Situations - Section 732.10

A. The Commission's Rehearing on the Definition of Emergency Situations Is Not Constrained as Some Carriers Suggest.

The carriers appear to assume that the only definition issue before the Commission is the length of time that a strike will be considered an emergency. The implication is that the Commission cannot simply exclude work stoppages from the definition of emergency situations. The carriers' arguments are based on a flawed premise. The rehearing statute, 220 ILCS 5/10-113, does not require the narrowly constricted examination sought by the carriers. If the Commission should "be of the opinion that the original rule, regulation, order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may rescind, alter or amend the same." 220 ILCS 5/1/-113. The Commission, on rehearing, is free to consider both whether emergency situations should include work stoppages and, if so, how long it will be deemed an emergency.

B. Labor Law Does Not Mandate That Work Stoppages, Without Limitation, Be Included in the Definition of Emergency Situations.

Ameritech and Verizon have argued that labor law mandates that the Commission must include strikes and work stoppages in the definition of an emergency situation, no matter the cause or how prolonged the strike or work stoppage. The carriers posit that because there is a general preemption against states interfering with labor disputes, the Commission must include strikes in the definition of emergency situations. That conclusion is neither logically inevitable nor intuitively required. As argued in earlier pleadings and comments, GCI contend that work stoppages and strikes should not be included in the definition of emergencies that relieve a carrier of its obligation to provide (a) adequate service or (b) credits if it fails to perform its statutory duties. The Part 732 rules should not shift the responsibility for maintaining service quality during work stoppages from carriers to customers and strikes or work stoppages should not be included in the definition of emergency situation in Part 732.

Under the carrier's reasoning, any obligation imposed by a governmental entity, whether it be license fees, sales tax, property tax, or other fees would be excused because of a strike or work stoppage. This makes no sense and is not supported by the evidence. The only obligations that the carriers showed were suspended during a strike were contractual obligations negotiated between businesses, which are discussed in subsection D. below. The carriers have offered no evidence that during a work stoppage, a business ceases to be obligated to comply with legal and regulatory requirements. Yet, that is what they are asking here.

The carriers' argument is that the proposed rule (adding the first seven days of a strike to the definition of emergency situation) interferes with labor relations. This argument ignores several realities. First, it is obvious that any action that affects their obligation to provide service will have some effect on the relative balance of responsibilities among carriers, workers, and customers. In this circumstance, the effect on customers -- who were the focus of the General Assembly's attention in the credits provisions -- should be determinative. The carriers, however, ignore the effect a 90 day exclusion would have on customers who may have to wait days, weeks, and possibly months for basic, local telephone service.

The General Assembly was plainly concerned about the effect of service quality problems on <u>consumers</u> when it enacted the credit system, and that is where the Commission's focus should be in considering this issue. If the service and credit obligations contained in Part 732 were removed during a 90 day strike period, the carriers would have no regulatory incentive to attempt to provide a level of service that the General Assembly believes the public is entitled to. Other regulatory obligations that are not suspended during the work stoppage would take precedence. GCI maintain that the Part 732 rule should not contain the strike exclusion the carriers request because that would effectively sacrifice service quality during a work stoppage.

The carriers rely on the United States Supreme Court case of San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) to support their position that there should be a strike exclusion. Garmon prohibits States from regulating "activity that the NLRA protects, prohibits, or arguably protects or prohibits." Wisconsin Dept. of Industry v. Gould Inc., 475 U.S. 282, 286, 106 S.Ct. 1057, 1061, 89 L.Ed.2d 223 (1986). The Part 732 rules would define the Commission's implementation of the section 13-712 statutory customer credit requirement for failure to provide the level of service quality defined in the Act. See 220 ILCS 5/13-712. These rules, even when they define the parameters of state regulatory exceptions to carrier credits, do not in any way regulate or seek to regulate labor affairs.

Regulatory activity is not preempted if it is (1) merely peripheral to the federal labor laws or (2) touches interests deeply rooted in local feeling and responsibility. Belknap, Inc. v. Hale, 463 U.S. 491, 498 (1983) *citing* Garmon, 359 U.S. at 243, Sears Roebuck & Co. v. Carpenters, 436 U.S. 180, 200, and Farmer v. Carpenter, 430 U.S. 290, 296-297. Under this test, the Commission's definition of carrier exemptions from the credit requirements would not be preempted; the matter is, at best, of merely peripheral concern to labor issues. Further, given the recent public uproar and legislative reaction with regard to the quality of telephone service in Illinois, as well as the long-standing recognition of state responsibility for the regulation of local telephone service, this is clearly a matter deeply rooted in local feeling and responsibility. Garmon provides no support for the carriers' proposition that the definition of an emergency situation must include strikes.

C. Ameritech's Assertion That Work Stoppages Should Be Included In the Definition of Emergency Situation, Without Limitation, Is in Contravention of the Testimony of its Own Witness.

Ameritech's assertion that work stoppages are appropriately included in the definition of emergency situation, without limitation, is inconsistent with the testimony of its own witness, Eric Panfil. Mr. Panfil acknowledged that strikes can be caused by the bad behavior of a carrier. Tr. at 142. In fact, for that reason he suggested limits on the inclusion of strikes or work stoppages. He stated that "[i]f a carrier has caused or extended a strike or work stoppage by acting in an unreasonable manner, the strike or work stoppage would be 'caused or exacerbated in scope or duration' by the carrier and would therefore not be an emergency." AI Ex. 2.0 p. 5.[1] Yet, Ameritech seems to argue that labor law prevents *any* limitation on work stoppages -- despite the factual and logical imperative for limits. The ambiguity in Ameritech's position simply reflects the fundamental problem of including work stoppages in the definition of work stoppages at all. Any such inclusion, if reasonably limited as Mr. Panfil suggests, would involve the Commission directly adjudicating the causes or faults at play in a work stoppage. The better course is for the Commission to exclude such exemptions entirely.

[1]Ameritech tries to reconcile Panfil's belief to the relief that they seek from the Commission by asserting that the Part 730 rules may be used to conduct an examination of the carrier's actions in causing a work stoppage. GCI notes that ICC Docket 00-0596, which is considering revisions to Part 730, is an open docket, and cannot be relied on with any certainty.

D. *Force Majeure* Clauses and Tariffs Provide No Precedent for the Inclusion of Strikes as Emergency Situations.

The carriers point to *force majeure* clauses in interconnection agreements as proof that the Commission has found work stoppages to be emergency situations. As Ms. Boswell admitted on cross examination, interconnection agreements are not regulatory obligations or requirements imposed by the Commission. Tr. at 51-52. Interconnection agreements are bilateral agreements entered into by two carriers with equal bargaining power. In approving these agreements, the Commission does not substitute its judgment as to appropriate terms; it only assures compliance with the law. The tariffs referred to by Ameritech are not telecommunication tariffs and may reflect unique aspects in the operations of different utilities. In fact, Ameritech's inability to point to any telecommunication tariffs with strikes included as a *force majeure* clause demonstrates that the Commission has not routinely considered strikes as emergency situations in telecommunication matters.

Issue 4: Bill Messages Section 732.50

Ameritech is incorrect in its assertion that the inclusion of information on customer credits, as mandated by 732.50 is in violation of the First Amendment. The Commission may require the inclusion of such inserts, without violating the First Amendment, because the messages concerning customer credits advances the Commission's and Legislature's interest in educating the customer and is not overly burdensome. *Ibanez v. Florida Department of Business and professional Regulation* (1994), 512 U.S. 136; *Central Hudson Gas & Electric Corporation v. Public Service Commission* (1980), 447 U.S. 557. Such requirements are routinely imposed -- and complied with -- in Illinois and other states.

The legislature, in including a customer education component in House Bill 2900, P.A. 92-0022, recognized the importance of informing the public of its rights. Without such information, the public would not know of their entitlements from a carrier, such as Ameritech, that has had significant service quality problems. Additionally, there is no evidence in the record to suggest that educating the customer as to the new credit provisions is not an important state interest.

There is ample testimony that repeated messages are necessary in order to inform the consumer of the new credit program. David Kolata testified that repeated 'hits' of the same message are necessary to educate consumers. GCI Ex. 1.0, p.8. Additionally, the record demonstrates that Ameritech currently has space on its bills to include messages about customer credits without having to include additional bill pages or having to exclude messages now on bills. GCI cross exhibit 1.0; Tr. at 149-154. Further, Verizon could not demonstrate that there was insufficient room on its bill for the messages as mandated in section 732.50. Other than providing testimony as to the types of messages included on bills, Ms. Boswell could not testify as to how frequently each of these messages was in fact included. Tr. at 53.

GCI note that the carriers have mischaracterized the requirements of 732.50 in their briefs and throughout this proceeding. The briefs contain arguments that it is difficult to include customer credit information on bill messages, but ignore the fact that this information may be included in bill inserts or separate mailings. In fact, there is a dearth of testimony on the record that including the information in bill inserts or separate mailings would be burdensome. The Commission, therefore, may conclude that the inclusion of customer credit information, in bill messages, bill inserts or bill mailings is not overly burdensome on the carrier.

The carriers have also inaccurately described the obligation to send bill messages, bill inserts or other customer education materials as being eight times per year. The number of bill messages, bill inserts, etc. is determined by when the carrier includes credit information in its directory. Once the directory is published, the number of "hits" is cut in half, to only four per year. Verizon testified that it had already prepared customer information in its Lawrenceville directory, scheduled for publication on April 5, 2002. Verizon Ex. 1.0 at 8 (lines 172-174). As the carriers can select areas to send bill messages and bill inserts, the obligation to provide eight customer education materials per year has already been halved for the Lawrenceville area. This process will continue over the year until all carriers are left with the very reasonable four messages per year obligation.

The carriers' attempts to undercut the customer education requirements adopted by the Commission should be rejected as not in the public interest and as not necessitated by the record.

Issue 4: Reporting

A. Ameritech and Verizon Have Not Justified the Wholesale Abandonment of Reporting.

AI and Verizon have failed to justify the massive revision of Part 732.60 they request on rehearing. Their positions are based on (1) erroneous premises about the purpose of Part 732 and HB 2900, and (2) computer programming "burdens." Their arguments are insufficient to justify eliminating the reporting requirements contained in section 732.60.

Verizon bases its argument against reporting on the lack of service quality "issues" it and other non-Ameritech LECs are experiencing. Verizon Ini. Br. at 16. This argument is wholly irrelevant. The General Assembly plainly made service quality standards, credits and reporting applicable to <u>all</u> local exchange carriers, regardless of size, whether they are incumbents or competitors, or their service quality history when it said: "It is the intent of the General Assembly that every telecommunications carrier meet minimum service quality standards in providing basic local exchange service on a non-discriminatory basis to all classes of customers." 220 ILCS 5/13-712(a). Further, the service quality debacle of the spring-summer-fall of 2000 demonstrated how quickly service quality problems can grow to crisis proportions. Verizon's refrain that it does not have service quality problems should be disregarded as irrelevant.

Verizon also argues that the Commission can request the information required in section 732.60, and therefore a rule is unnecessary. Verizon Ini. Br. at 16. The Commission already rejected this approach to reporting exemptions, and certainly should not be expected to accept it now for all reporting. The Commission, the public and the carriers themselves should be informed as to the level of service quality provided to telephone customers in Illinois on an ongoing basis. The level of credits issued and exemptions claimed must be public so that appropriate accountability, regulatory oversight and carrier planning can occur. It would undermine the credit system if the reporting provided for in section 732.60 were eliminated because the accountability the General Assembly clearly expected would be frustrated. There would be no evidence to determine whether the rule was functioning as intended or if it needed to be modified to address unanticipated problems or abuses.

Verizon's and Ameritech's position that credit and exemption information could be produced upon Staff request demonstrates that, in fact, they have the information the rules require, in contradiction to their argument that it is too burdensome to produce it. Leaving this information in the sole possession of the carriers, subject to Staff request, puts the burden on Staff to ferret out problems before they occur, and leaves the public totally in the dark. The public reporting requirements of section 13-712(f) mandate against this approach. 220 ILCS 5/12-712(f).

Verizon and Ameritech argue that there has not been a "cost-benefit" analysis of the reporting rule, and that it is too burdensome. Verizon Ini. Br. at 17; AI Ini. Br. at 21. These parties forget that this is a rehearing, upon their petition, and that the burden of justifying a change in the rule is on them. If they believe that a cost-benefit analysis was necessary, it was incumbent upon them to provide it. Verizon's "well over $1 million" estimate is so vague as to be meaningless, particularly in light of its rate base of hundreds of millions of dollars. See ICC Docket 93-0301/94-0041, Order at 74 (1994)(Verizon predecessor GTE North). Ameritech laid out the steps it claimed were necessary to coordinate its billing and its operations systems, but ignored the fact that its billing system could be sorted to send billing messages and bill inserts to select customer groups. Compare AI Ex. 1.0 at 14, 16 with GCI Ex. 1.0 at 9. The vagueness and incompleteness of their discussion of their "burden", combined with the carriers' refusal to recognize <u>any</u> public, Commission or carrier benefit to reporting despite a legislative mandate for public reporting, demonstrate that these carriers have not offered sufficient evidence to support their petition and their request to change the existing rules.

As part of the credit system created in section 13-712, the General Assembly plainly expected the rules to include "public reporting", with the reports posted on the Commission's web site. 220 ILCS 5/13-712(f). Yet, Ameritech argues that the General Assembly did not intend to create any new record-keeping requirements. AI Ini. Br. at 15. It is illogical to assert that while adopting a new credit system and requiring the resulting rules to include public reporting, the General Assembly did not intend to create any new record-keeping requirements.

How could credits be issued and reported to the Commission without some new record-keeping requirements? Ameritech is confusing the legislative compromise to require disaggregation of geographic areas and customer class as already monitored by the carrier, with reporting in general. The Initial Comments of the People of the State of Illinois, dated September 24, 2001, at page 12 discuss the level of disaggregation Ameritech and Verizon already maintain for state and federal reporting purposes. The rule simply maintains that level, as required by section 13-712(f). It does not impose new disaggregation requirements.

Ameritech argues that credit information simply measures the same performance as the Part 730 rules, but more indirectly. AI Ini. Br. at 16. This is incorrect. GCI have already explained that the credit reporting is not redundant in its Initial Brief on Rehearing at 11. Further, the credit reporting directly measures the revenue effect of the credit system on the carriers and the public, and the exemption reporting measures the revenue savings as well as the extent to which consumers experience late installations and repairs and missed appointments. The exemption reporting related to emergency situations and lack of facilities (section 732.30(e)(3) and (7)) is particularly important to the Commission and the public in order to monitor whether carriers' facilities are adequate to continue the required level of service quality and to insure that these exemptions are being properly claimed. Without this reporting, the Commission, the public and the General Assembly would have no information about how the new system created by section 13-712 is operating. Clearly, the General Assembly did not intend that result when it directed the Commission to promulgate rules within one year and specified minimum reporting parameters.

Ameritech suggests that the credit reporting will cause public confusion and that the volume of information is somehow detrimental to consumers. AI Ini. Br. at 17. Ameritech underestimates public sophistication and the value of having information available to both ordinary citizens and experts who utilize public information for reports, analyses and testimony. As Ameritech itself pointed out, the FCC found missed installation and repair appointments, and installation and repair intervals to be "of particular interest to consumers". AI Ex. 2.0 at 11 (lines 245-247). Certainly, in Illinois, with our history of service quality problems, the Commission is entitled to similar information for Illinois. For companies with service areas as large as Ameritech's and Verizon's, disaggregation by customer class and geographic area is necessary to allow the Commission to effectively monitor service quality throughout the state.

Ameritech also argues that no one presented testimony defending the disaggregation requirement. AI Ini. Br. at 19. GCI submit that no testimony is necessary. The General Assembly plainly included disaggregation as a valuable and necessary part of reporting for obvious reasons. When a company like Ameritech serves about 5.8 million access lines, and Verizon North serves over 800,000 access lines while serving a larger geographic space, a company-wide report does not allow the public or the Commission to discern variations among different regions. See 2000 ICC Annual Report on Telecommunications. In addition to the fact that the burden is on Ameritech, as a petitioner on this rehearing, to justify overturning the rule, the need for disaggregation is obvious.

Ameritech, like Verizon, argue that the reporting rules are burdensome because the revenue data are available on one system (billing) and the service quality data are available on another (operations). AI Ini. Br. at 18; Verizon Ini. Br. at 17. In particular, Ameritech argues that it cannot disaggregate nformation frm its billing system. AI Ini. Br. at 19. However, this ignores the fact that both companies can disaggregate their billing systems to the extent that they can send bill inserts and bill messages to various customer groups, such as to those customers who are expecting new telephone directories. If they can select which customers will receive bill messages, their systems should also be able to select geographic areas and customer classes for reporting purposes. The idea that disaggregation is impossible is not credible.

Ameritech argues that reporting the value of exemptions would create a "what if" number that does not have "real-world utility." AI Ini. Br. at 20. This argument ignores the fact that the savings from exemptions are a "real-world" number. The amount of revenue saved from claiming exemptions is just that: a savings. Moreover, it shows to what extent consumers have not been compensation for delays and missed appointments they actually experience. It enables the Commission to monitor the use of exemptions in light of known conditions, such as severe weather.

Finally, Ameritech requests eight months from the date of the final order to implement the disaggregation reporting requirements and an additional two months to report exemption credits. AI Ini. Br. at 22. This request should be rejected, along with the request to eliminate disaggregation and exemption reporting entirely. Section 13-712 (c) says: "These rules shall become effective within one year after the effective date of this amendatory Act of the 92nd General Assembly." 220 ILCS 5/13-712(c). As the Act was effective on June 30, 2001, Ameritech's requested delay would violate this requirement. Furthermore, it should not be necessary, in light of the disaggregation Ameritech has already provided to the Commission in connection with the 2000 service quality problems and its ability to select areas for bill messages and bill inserts.

B. AT&T's Opposition to Reporting Is Based on Information That it Did Not Offer as Evidence, and Therefore Cannot Be Considered on this Rehearing.

AT&T filed an Initial Brief in which it requested that the section 732.60 reporting requirements be eliminated. The bases for AT&T request, however, were not offered as evidence on this rehearing, and therefore are not properly before the Commission. See AT&T Ini. Br. at 4. This rehearing was allowed specifically to enable the parties to offer sworn statements on each issue, and AT&T did not do that. It should not be allowed to offer evidence in its Initial Brief. Accordingly, the following language in AT&T's Initial Brief should be stricken on page 4:

> "AT&T does not currently have the system functionality in place between its repair and billing systems to support this reporting requirement.
>
> The ability to provide these reports will require new functionality in both internal AT&T repair systems and the external systems of outside vendors who provide AT&T with billing services. This will likely require system design, new system development, unit testing, integration testing and deployment of functionality."

AT&T's request that reporting be delayed for 9 months runs afoul of the legislative requirement that rules be in place within 12 months, just as does Ameritech's requested delay.

CONCLUSION

For the foregoing reasons and those in GCI's Initial Brief filed on March 26, 2002, GCI request that the Commission reject the changes to the Part 732 rules proposed on this rehearing.

Respectfully submitted,

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April 2, 2002

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